
THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES WILLIAM COSTILOW,

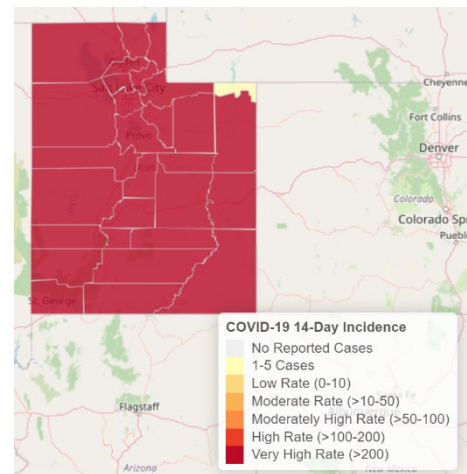
Defendant.

**MEMORANDUM DECISION AND
ORDER CONTINUING TRIAL
AND EXCLUDING TIME
UNDER THE SPEEDY TRIAL ACT**

Case No. 4:20-cr-00109-DN-PK-2

District Judge David Nuffer
Magistrate Judge Paul Kohler

This case is currently set for trial on February 7, 2022.¹ Given the [unrelenting persistence](#) of the Coronavirus Disease (“COVID-19”), a status conference was held² to discuss whether to continue trial. Based on the filings in this case, discussions at the status conference, and [General Order 22-002](#), under DUCrimR 12-1(l) and for good cause appearing, the court makes the following findings:



1. A Second Superseding Indictment was filed against Mr. Costilow on December 8, 2021.³ Mr. Costilow was arraigned on December 16, 2021.⁴ Trial was set for February 7, 2022.⁵

2. Against the backdrop of Mr. Costilow’s case, the country has been wrestling the outbreak of the Coronavirus Disease (COVID-19). On March 16, 2020, Chief Judge Robert

¹ Amended Trial Order, [docket no. 239](#), filed Jan. 5, 2022.

² Docket no. 246, entered Jan. 12, 2022.

³ [Docket no. 221](#).

⁴ Docket no. 227.

⁵ [Docket no. 239](#).

Shelby issued General Order No. 20-009 in response to the outbreak, continuing all criminal jury trials pending further order of the Court. Through successive General Orders, Chief Judge Shelby vacated all jury trials through April 2021.

3. On April 29, 2021, pursuant to General Order No. 21-003, the courthouse began continuous, consecutive jury trials, one trial at a time in the courthouse. The Court entered General Order No. 21-015 on October 27, 2021, extending Phase II of the Court's phased reopening plan through January 31, 2022. Chief Judge Shelby ordered that the time between April 1, 2021 and January 31, 2022 was to be excluded from speedy trial calculations pursuant to 18 U.S.C. § 3161(h)(7)(A).

4. On January 5, 2022, the Court entered General Order No. 22-002, which moved the Court back to Phase I of the Court's phased reopening plans and vacated all jury trials scheduled between now and February 14, 2022 due to the impact of the new Omicron variant. Chief Judge Shelby ordered that the time between January 1, 2022 and February 14, 2022 was to be excluded from speedy trial calculations pursuant to 18 U.S.C. § 3161(h)(7)(A).

5. General Order No. 22-002 grants Judge Nuffer emergency authority promulgate rules and procedures for the Southern Region proceedings consistent with State of Utah and Washington County directives and COVID-19 conditions within the Southern Region.⁶

6. At the status conference, counsel for Mr. Costilow and the USA discussed the following:

The current spike in COVID-19 cases due to the Omicron variant, and the difficulty this has created for trial preparation (18 U.S.C. § 3161(h)(7)(B)(iv)), including:

⁶ General Order 22-002 at 13.

Problems with movement of prisoners (the defendant and witnesses), including delays because of COVID-19 cases and the need to quarantine prisoners.

Problems with housing prisoners separately, so Mr. Costilow will not be able to be separated from prisoner-witnesses and would need to be quarantined for an unknown amount of time.

Barriers to defense counsel's ability to meet with Mr. Costilow to prepare for trial because of jail visitation restrictions which are subject to change.

The public health risks associated with holding a jury trial in the midst of the COVID-19 pandemic and the new spike in cases due to the Omicron variant. *See also* General Order 22-002 at 3–5.

7. The Court also noted the possibility that the State Judicial Council may decide to close the St. George courthouse given the rise in COVID-19 cases.

8. Mr. Costilow does not object to continuing trial.

9. Defense Counsel and the USA suggested a new trial date of Monday, March 28, 2022, with virtual voir dire on Friday, March 25, 2022.

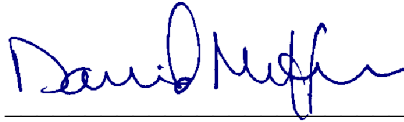
Based on the foregoing findings, the court concludes that failure to grant a continuance would result in a miscarriage of justice. *See* 18 U.S.C. § 3161(h)(7)(B)(i). Therefore, the ends of justice served by such a continuance outweigh the best interests of the public and Defendant in a speedy trial.

ORDER

IT IS HEREBY ORDERED the 5-day jury trial previously scheduled to begin on February 7, 2022, is vacated, along with all trial related dates, including the final pretrial. The 5-day jury trial is reset to begin on March 28, 2022 at 8:30 a.m, with virtual voir dire scheduled for Friday, March 25, 2022. The time between the entry of this Order and the new trial date set forth above is excluded from speedy trial computations for good cause. Revised trial orders will issue at a later date.

Signed January 12, 2022.

BY THE COURT



David Nuffer
United States District Judge